

AMENDED IN SENATE AUGUST 15, 2011

AMENDED IN SENATE JULY 12, 2011

AMENDED IN SENATE JUNE 29, 2011

AMENDED IN ASSEMBLY MAY 31, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 506

Introduced by Assembly Member Wieckowski

February 15, 2011

~~An act relating to local government.~~ *An act to amend Section 53760 of, and to add Sections 53760.1, 53760.3, 53760.5, 53761, 53761.3, 53761.5, 53762, 53762.1, 53762.3, 53762.5, and 53762.7 to, the Government Code, relating to local government.*

LEGISLATIVE COUNSEL'S DIGEST

AB 506, as amended, Wieckowski. Local government: bankruptcy: neutral evaluation.

Under existing law, any taxing agency or instrumentality of the state may file a petition and prosecute to completion bankruptcy proceedings permitted under the laws of the United States.

This bill would prohibit a local public entity from filing under federal bankruptcy law unless the local public entity has participated in a neutral evaluation process with interested parties, as defined, has received a certificate of good faith participation, and if the neutral evaluation results in either an agreement for debt readjustment, or if the neutral evaluator certifies in writing that continued neutral

evaluation will not contribute to a resolution of the parties' dispute, under certain circumstances. The bill would also require the California Debt and Investment Advisory Commission to maintain a list of qualified neutral evaluators on its Internet Web site.

The bill would authorize the State Auditor to conduct an audit of the local public entity upon request of the local public entity, as specified. The bill would additionally provide an alternative process that a local public entity may use to file under federal bankruptcy law if the financial difficulties of the local public entity jeopardize the health, safety, or well-being of the residents of the local public entity's jurisdiction or service area absent the protections of bankruptcy. The bill would require the local public entity to submit a petition to the Local Agency Bankruptcy Committee, which would consist of the Treasurer, Controller, and Director of Finance, and would require the Local Agency Bankruptcy Committee to review the petition and approve or deny the petition, in writing, as specified.

~~This bill would express the intent of the Legislature to enact legislation that would provide an alternative dispute resolution procedures that cities, counties, and special districts may use before they seek financial relief through the provisions of Chapter 9 of the federal Bankruptcy Code.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature hereby finds and declares all of*
 2 *the following:*
 3 *(a) The California Constitution and current statutory law*
 4 *provide for a continuity and interdependence between state and*
 5 *local governmental entities. Seeking financial relief through the*
 6 *provisions of Chapter 9 of the United States Bankruptcy Code*
 7 *imposes substantial administrative costs and expenses on a*
 8 *municipality, potentially exceeding several million dollars. In*
 9 *order for a municipality to be a debtor under Chapter 9, the*
 10 *municipality must prove that it is eligible for Chapter 9 relief by*
 11 *satisfying requirements in Section 109(c) of Title 11 of the United*
 12 *States Code, that include, but are not limited to, establishing that*
 13 *the municipality is insolvent, that the municipality desires to effect*
 14 *a plan to adjust its debts, and that the municipality has negotiated*

1 *in good faith or attempted to negotiate in good faith with its*
2 *creditors, as specified in that section.*

3 *(b) Filing for Chapter 9 can reduce service levels to the*
4 *taxpayers and residents of a municipality. In some circumstances,*
5 *it can have major short- and long-term fiscal consequences for*
6 *the municipality, the surrounding municipalities, and the state.*
7 *Filing for bankruptcy protection under Chapter 9 should be*
8 *considered a last resort, to be instituted only after other reasonable*
9 *efforts have been made to avoid a bankruptcy filing or otherwise*
10 *appropriately plan for it. It is in the interest of the state, local*
11 *governments, and the public that local governmental entities have*
12 *sufficiently sound financial capacity to provide required services*
13 *to the public and meet their contractual and other obligations*
14 *during any restructuring or financial reorganization process.*
15 *Furthermore, it is in the best interest of the public, the state, and*
16 *local governmental entities that employees, trade creditors,*
17 *bondholders, and other interest holders be included in an*
18 *appropriate restructuring process and have an adequate*
19 *understanding of the financial capacity of local governmental*
20 *entities and their obligations, as a clear understanding of both is*
21 *necessary for any restructuring or reorganization process.*

22 *(c) The Legislature has an interest in monitoring the conditions*
23 *under which local entities may seek Chapter 9 protection. The*
24 *relief provided through the bankruptcy process can affect state*
25 *and municipal government service levels, debt, and contracts. The*
26 *Legislature has a strong interest in ensuring adequate disclosure*
27 *of the conditions under which a municipality may seek Chapter 9*
28 *protection and providing a process to make any Chapter 9 filing*
29 *as efficient as possible.*

30 *(d) To the extent financial relief granted through Chapter 9 can*
31 *affect debt service payments, the bondholders have a direct interest*
32 *in the Chapter 9 process, particularly prior to filing. Therefore,*
33 *it is important for those parties to be able to participate in a*
34 *prefiling confidential neutral evaluation process that could assist*
35 *parties in reaching a settlement and avoiding a bankruptcy filing*
36 *or otherwise lead to a prenegotiated consensual plan of*
37 *readjustment as clearly contemplated by Section 109(c) of Title*
38 *11 of the United States Code.*

39 *(e) To the extent financial relief granted through Chapter 9*
40 *could affect public employee compensation, employees have a*

1 *direct interest in the Chapter 9 process, particularly prior to filing.*
2 *Therefore, it is important for those parties to be able to participate*
3 *in a prefiling confidential neutral evaluation process that could*
4 *assist parties in reaching a settlement or otherwise lead to a*
5 *prenegotiated, consensual plan of adjustment and avoid a Chapter*
6 *9 filing.*

7 *(f) The state has established a statewide system of public*
8 *employee collective bargaining for state and local government*
9 *employers and employees intended to protect the state's interest*
10 *in promoting peaceful and harmonious labor relations and*
11 *preventing work stoppages. Contracts reached through collective*
12 *bargaining are essential to maintaining labor peace and the*
13 *uninterrupted delivery of vital public services, and these*
14 *agreements may be subject to review, amendment, or rejection in*
15 *the event of a Chapter 9 bankruptcy proceeding. It is the intent of*
16 *the Legislature that the rights of workers to collectively bargain*
17 *be fully enforced and respected in the neutral evaluation process.*

18 *(g) Currently, 23 states do not permit municipalities to file for*
19 *bankruptcy. Twenty-seven states permit municipalities to file for*
20 *bankruptcy, but most states impose standards and guidelines for*
21 *access to bankruptcy proceedings. California is one of only 10*
22 *states that does not restrict or otherwise limit the authority of its*
23 *municipalities to file for bankruptcy. At present, California offers*
24 *no opportunity for those municipalities that are insolvent to receive*
25 *state-level, prebankruptcy guidance, oversight, neutral evaluation,*
26 *or assistance. Nor does the state provide a mechanism for exchange*
27 *of current and projected financial information with public employee*
28 *representatives, debt and bondholders, and other interested parties*
29 *in a prebankruptcy setting even if these municipalities are not*
30 *currently insolvent but concerned about becoming insolvent and*
31 *unable to pay obligations as these obligations come due. As a*
32 *result, there is no process in this state requiring potential Chapter*
33 *9 debtors to qualify as Chapter 9 debtors, leaving these cases*
34 *subject to motions to dismiss on any number of grounds, thus*
35 *delaying earlier resolution and increasing administrative fees,*
36 *legal fees, and costs.*

37 *(h) State intervention in local affairs should only occur in*
38 *exceptional circumstances and not without a compelling interest*
39 *of statewide concern.*

1 (i) *Given the connection between state allocations and local*
2 *budgets, the state has a role in assisting municipalities to address*
3 *potential insolvency with the goal of averting municipality*
4 *bankruptcy filings where possible and providing a process designed*
5 *to make the debt restructuring process in or outside of a Chapter*
6 *9 bankruptcy as cost effective and efficient as possible for all*
7 *participants.*

8 (j) *It is the duty of all state and local elected officials to ensure*
9 *that governments provide essential services to the communities*
10 *they are elected to serve, and to respect collective bargaining*
11 *agreements reached with their employees.*

12 (k) *California's taxpayers who rely on public safety, senior,*
13 *recreational, municipal health, library, and other public services,*
14 *as well as those who own and operate businesses in our*
15 *communities, deserve every reasonable and appropriate effort that*
16 *state and local government can make to avoid adverse*
17 *consequences of Chapter 9 bankruptcy filings, particularly where*
18 *a neutral evaluation may lead to the avoidance of Chapter 9 filing*
19 *by an out-of-court resolution of outstanding obligations and*
20 *disputes.*

21 (l) *Resolving municipal and state business and financial issues*
22 *in a timely, fair, and cost-effective manner is an integral part of*
23 *a successful government and is in the public interest. It has long*
24 *been recognized that alternative dispute resolution proceedings,*
25 *like a neutral evaluation, offer an economical, discreet, and*
26 *expeditious way to resolve potentially devastating situations.*

27 (m) *Through the neutral evaluation process, the neutral*
28 *evaluator, a specially trained, neutral third party can assist the*
29 *municipality and its creditors and stakeholders to fully explore*
30 *alternatives, while allowing the interested parties to exchange*
31 *information in a confidential environment with the assistance and*
32 *supervision of a neutral evaluator to determine whether the*
33 *municipality's contractual and financial obligations can be*
34 *renegotiated on a consensual basis.*

35 SEC. 2. *Section 53760 of the Government Code is amended to*
36 *read:*

37 53760. (a) *Except as otherwise provided by statute, a local*
38 *public entity in this state*~~*may*~~ *shall not file a petition and exercise*
39 *powers pursuant to applicable federal bankruptcy*~~*law.*~~ *law unless*
40 *the local public entity has participated in the neutral evaluation*

1 *process as provided in this article and received a good faith*
2 *certification from the neutral evaluator, and if one of the following*
3 *applies:*

4 *(1) The local public entity has reached an out-of-court*
5 *agreement with all interested parties regarding a plan of*
6 *adjustment pursuant to subdivision (b) of Section 53762.5.*

7 *(2) The local public entity and the interested parties were unable*
8 *to reach an out-of-court agreement and the neutral evaluator has*
9 *certified in writing that the parties have participated in the neutral*
10 *evaluation process in good faith, pursuant to subdivision (d) of*
11 *Section 53762.5.*

12 *(3) The local public entity initiated the neutral evaluation*
13 *process and interested parties did not participate in the neutral*
14 *evaluation process, pursuant to subdivision (e) of Section 53762.5.*

15 *(b) A local public entity shall not file a petition and exercise*
16 *powers pursuant to subdivision (a) if the neutral evaluator*
17 *determines that a local entity has failed to participate in the neutral*
18 *evaluation process in good faith. Failure to participate in good*
19 *faith includes, but is not limited to, the failure to provide accurate*
20 *and essential financial information to the neutral evaluator, the*
21 *failure to attempt to reach settlement with all interested parties to*
22 *avert bankruptcy, or evidence of manipulation to delay and obstruct*
23 *a timely agreement.*

24 ~~(b)~~

25 *(c) As used in this section, “local public entity” means any*
26 *county, city, district, public authority, public agency, or other*
27 *entity, without limitation, that is a “municipality,” as defined in*
28 *paragraph (40) of Section 101 of Title 11 of the United States Code*
29 *(bankruptcy), or that qualifies as a debtor under any other federal*
30 *bankruptcy law applicable to local public entities. For purposes*
31 *of this article, “local public entity” does not include a school*
32 *district.*

33 *SEC. 3. Section 53760.1 is added to the Government Code, to*
34 *read:*

35 *53760.1. As used in this article the following terms have the*
36 *following meanings:*

37 *(a) “Chapter 9” means Chapter 9 (commencing with Section*
38 *901) of Title 11 of the United States Code.*

39 *(b) “Claim” means either of the following:*

1 (1) A right to payment, whether or not the right is reduced to
2 judgment, liquidated, unliquidated, fixed, contingent, matured,
3 unmatured, disputed, undisputed, legal, equitable, secured, or
4 unsecured.

5 (2) A right to an equitable remedy for breach of performance
6 if the breach gives rise to a right to payment, whether or not the
7 right to an equitable remedy is reduced to judgment, fixed,
8 contingent, matured, unmatured, disputed, undisputed, secured,
9 or unsecured.

10 (c) “Collective bargaining” means the process by which workers
11 exercise their right to negotiate with an entity’s or organization’s
12 management in a good faith process to establish employee
13 compensation, working conditions, and other matters of mutual
14 interest.

15 (d) “Collective bargaining agreement” means a written, legally
16 enforceable contract for a specified period, between the
17 management of an entity or organization and its employees
18 represented by a recognized union. It sets down and defines
19 conditions of employment, including, but not limited to, wages,
20 working hours and conditions, overtime payments, holidays,
21 vacations, health benefits, retirement benefits, and procedures for
22 dispute resolution.

23 (e) “Creditor” means either of the following:

24 (1) An entity that has a claim against a municipality that arose
25 at the time of or before the commencement of the neutral evaluation
26 process and whose claim represents at least 5 percent of the
27 municipality’s general fund obligations.

28 (2) An entity that may have a claim against the municipality
29 arising out of rejection of an executory contract or unexpired lease
30 in a Chapter 9 case and whose claim represents at least 5 percent
31 the municipality’s general fund obligations.

32 (f) “Debtor” means a local public entity that may file for
33 bankruptcy under Chapter 9.

34 (g) “Good faith” means participation by a party in the neutral
35 evaluation process with the intent to negotiate toward a resolution
36 of the issues that are the subject of the neutral evaluation process,
37 including, but not limited to, the timely provision of complete and
38 accurate information to provide the relevant parties through the
39 neutral evaluation process with sufficient information, in a

1 confidential manner, to negotiate the readjustment of the
2 municipality's debt.

3 (h) "Indenture trustee" means a trustee under a mortgage, deed
4 of trust, or indenture, under which there is an outstanding security
5 other than a voting trust certificate, constituting a claim against
6 the municipality.

7 (i) "Interested party" means a trustee, a committee of creditors,
8 a creditor, an indenture trustee, a pension fund, a bondholder, a
9 union that, under its collective bargaining agreements, has
10 standing to initiate contract or debt restructuring negotiations
11 with the municipality, or a representative selected by an association
12 of retired employees of the public entity who receive income from
13 the public entity convening the neutral evaluation.

14 (j) "Local public entity" means any county, city, district, public
15 authority, public agency, or other entity, without limitation, that
16 is a municipality as defined in Section 101(40) of Title 11 of the
17 United States Code (bankruptcy), or that qualifies as a debtor
18 under any other federal bankruptcy law applicable to local public
19 entities.

20 (k) "Local public entity representative" means the person or
21 persons designated by the local public agency with authority to
22 make recommendations and to attend the neutral evaluation on
23 behalf of the governing body of the municipality.

24 SEC. 4. Section 53760.3 is added to the Government Code, to
25 read:

26 53760.3. (a) A local public entity may initiate the neutral
27 evaluation process pursuant to this article. A neutral evaluator
28 shall oversee the neutral evaluation process, and shall facilitate
29 all of the requirements set forth in subdivision (b).

30 (b) (1) The local public entity shall make complete disclosure
31 to the neutral evaluator of all documentation necessary to clearly
32 demonstrate whether the local public entity is solvent, including,
33 but not limited to, financial reports, expenditures, assets, and any
34 other relevant documentation.

35 (2) The local public entity and any interested party or interested
36 parties participating in the neutral evaluation process shall present
37 information to each other, that shall include, but is not limited to,
38 the status of funds of the local public entity that clearly
39 distinguishes between general funds and special funds.

1 (3) *The local public entity and any interested party shall present*
2 *the entity's proposed plan of readjustment.*

3 (4) *The local public entity and all interested parties participating*
4 *in the neutral evaluation process shall negotiate in good faith.*

5 (c) *The neutral evaluation process shall be confidential and is*
6 *subject to Section 53762.7.*

7 SEC. 5. *Section 53760.5 is added to the Government Code, to*
8 *read:*

9 53760.5. (a) *A local public entity may initiate the neutral*
10 *evaluation process when the local public entity is or likely will*
11 *become unable to meet its financial obligations as and when those*
12 *obligations are due or become due and owing.*

13 (b) *A neutral evaluation shall be conducted through an*
14 *alternative dispute resolution program within the state and in*
15 *accordance with this article.*

16 (c) *The role of the neutral evaluator shall be to assist all*
17 *interested parties in reaching an equitable settlement to avert a*
18 *Chapter 9 filing. The neutral evaluator shall also assist the parties*
19 *in identifying the anticipated legal costs and time associated with*
20 *a Chapter 9 filing relative to the local public entity's budget*
21 *shortfall. The neutral evaluator may consult with alternative*
22 *dispute resolution service providers, the California Debt and*
23 *Investment Advisory Commission, the California State Mediation*
24 *and Conciliation Service, the Executive Office for United States*
25 *Trustees, retired bankruptcy judges, or other appropriate entities*
26 *in connection with the neutral evaluation regarding issues that*
27 *are not confidential or in connection with any matters with the*
28 *consent of the parties participating in the neutral evaluation.*

29 SEC. 6. *Section 53761 is added to the Government Code, to*
30 *read:*

31 53761. (a) *A neutral evaluator shall meet all of the following*
32 *qualifications:*

33 (1) *At least 10 years of high-level business or legal practice*
34 *involving bankruptcy or service as a United States Bankruptcy*
35 *Judge.*

36 (2) *Experience and training in conflict resolution and alternative*
37 *dispute resolution.*

38 (3) *Commencing January 1, 2013, completion of a mandatory*
39 *training program in municipal organization, municipal debt*
40 *restructuring, Chapter 9 bankruptcy, public finance, taxation,*

1 *California constitutional law, California labor law, federal labor*
2 *law, and municipal finance dispute resolution, provided through*
3 *an alternative dispute resolution program within the state.*

4 *(b) The neutral evaluator shall be impartial, objective,*
5 *independent, and free from prejudice. The neutral evaluator shall*
6 *not act with partiality or prejudice based on any participant's*
7 *personal characteristics, background, values or beliefs, or*
8 *performance during the neutral evaluation process.*

9 *(c) (1) The neutral evaluator shall avoid a conflict of interest*
10 *or the appearance of a conflict of interest during the neutral*
11 *evaluation process. The neutral evaluator shall make a reasonable*
12 *inquiry to determine whether there are any facts that a reasonable*
13 *individual would consider likely to create a potential or actual*
14 *conflict of interest. Notwithstanding subdivision (b) of Section*
15 *53761.3, if the neutral evaluator is informed of the existence of*
16 *any facts that a reasonable individual would consider likely to*
17 *create a potential or actual conflict of interest, the neutral*
18 *evaluator shall disclose these facts in writing to the local public*
19 *entity and all interested parties involved in the neutral evaluation.*
20 *If any party to the neutral evaluation objects to the neutral*
21 *evaluator, that party shall notify all other parties to the neutral*
22 *evaluation, including the neutral evaluator, within 15 days of*
23 *receipt of the notice from the neutral evaluator, the neutral*
24 *evaluator shall withdraw and a new neutral evaluator shall be*
25 *selected pursuant to subdivisions (a) and (b) of Section 53761.3.*

26 *(2) Prior to the neutral evaluation process, the neutral evaluator*
27 *shall not establish another relationship with any of the parties in*
28 *a manner that would raise questions about the integrity of the*
29 *neutral evaluation, except that the neutral evaluator may conduct*
30 *further neutral evaluations regarding other potential local public*
31 *entities that may involve some of the same or similar constituents*
32 *to a prior mediation.*

33 *(d) The neutral evaluator shall conduct the neutral evaluation*
34 *process in a manner that promotes voluntary, uncoerced*
35 *decisionmaking in which each party makes free and informed*
36 *choices regarding the process and outcome.*

37 *(e) The neutral evaluator shall not impose a settlement on the*
38 *parties. The neutral evaluator shall use his or her best efforts to*
39 *assist the parties to reach a satisfactory resolution of their disputes.*
40 *Subject to the discretion of the neutral evaluator, the neutral*

1 evaluator may make oral or written recommendations for
2 settlement or plan of readjustment to a party privately or to all
3 parties jointly.

4 (f) The neutral evaluator has a duty to instruct and inform the
5 local public entity and all parties of the limitations of Chapter 9
6 relative to other chapters of the bankruptcy codes. This instruction
7 shall highlight the limited authority of United States bankruptcy
8 judges in Chapter 9 such as the lack of flexibility available to
9 judges to reduce or cram down debt repayments and similar efforts
10 not available to reorganize the operations of the city that may be
11 available to a corporate entity.

12 (g) The neutral evaluator may request from the parties
13 documentation and other information that the neutral evaluator
14 believes may be helpful in assisting the parties to address the
15 obligations between them.

16 (h) In the event a complete settlement of all or some issues in
17 dispute is not achieved within the scheduled neutral evaluation
18 session or sessions, the neutral evaluator may, at the neutral
19 evaluator's discretion, continue to communicate with the parties
20 in an ongoing effort to facilitate a complete settlement in order to
21 avoid a Chapter 9 filing.

22 (i) The neutral evaluator shall provide counsel and guidance
23 to all parties and shall not be a legal representative of any party
24 and shall not have a fiduciary duty to any party.

25 (j) In the event of a settlement with all interested parties, the
26 neutral evaluator may assist the parties in negotiating a
27 prepetitioned, preagreed plan of readjustment in connection with
28 a potential Chapter 9 filing.

29 (k) The California Debt and Investment Advisory Commission,
30 in accordance with its mission to provide information, education,
31 and technical assistance on debt issuance and public fund
32 investments to local public agencies, shall maintain on its Internet
33 Web site a list of qualified neutral evaluators. Inclusion on the list
34 shall be determined based on whether a potential neutral evaluator
35 meets the minimum requirements described in subdivision (a).

36 SEC. 7. Section 53761.3 is added to the Government Code, to
37 read:

38 53761.3. (a) The parties may select a neutral evaluator from
39 the list of qualified evaluators pursuant to Section 53761 through
40 a mutually agreed upon process.

1 (b) If the public entity and interested parties fail to agree on an
2 evaluator within five days of the public entities governing board
3 or council passing a resolution to initiate the neutral evaluation
4 process, the public entity shall select seven qualified evaluators
5 from the list created pursuant to subdivision (k) of Section 53761,
6 and the three largest creditors shall alternately strike names from
7 the list, with the first interested party to strike names being
8 determined by the value of the undisputed claim each holds against
9 the public entity.

10 (c) If at any time during the neutral evaluation process the local
11 public entity and a majority of the representatives of the interested
12 parties participating in the neutral evaluation wish to remove the
13 neutral evaluator, the local public entity or any interested party
14 may make a request to the other interested parties to remove the
15 neutral evaluator. If the local public entity and the majority of the
16 interested parties agree that the neutral evaluator should be
17 removed, the parties shall select a new neutral evaluator pursuant
18 to subdivisions (a) and (b).

19 SEC. 8. Section 53761.5 is added to the Government Code, to
20 read:

21 53761.5. At the request of the neutral evaluator, the local public
22 entity and any party participating in the neutral evaluation shall
23 produce all documents including current financial information
24 and projections addressing future financial obligations affecting
25 the local public entity. The neutral evaluator shall keep this
26 information confidential and shall not disclose to parties
27 participating in the neutral evaluation process without first
28 obtaining the consent of the public entity or the interested parties
29 participating in the neutral evaluation that provided the
30 information. The neutral evaluator may request the submission or
31 exchange of memoranda on issues, including the underlying
32 interests, and the history of the parties' prior negotiations.

33 SEC. 9. Section 53762 is added to the Government Code, to
34 read:

35 53762. (a) At the request of the neutral evaluator, each
36 interested party shall provide at least one representative of each
37 party to attend all neutral evaluation conferences. Each party's
38 representative shall have authority to settle and resolve disputes
39 or shall be in a position to present any proposed settlement or

1 *plan of readjustment to the governing body or membership for*
2 *approval and implementation.*

3 *(b) The local public entity shall provide a local public entity*
4 *representative who shall represent the local public entity's interest*
5 *in the neutral evaluation and who shall be in a position to present,*
6 *recommend, and advocate for any proposed settlement or plan of*
7 *readjustment to the governing body of the local public entity.*

8 *(c) An interested party may be represented by legal counsel,*
9 *but shall inform all parties of the representation, and shall attend*
10 *the sessions in person.*

11 *(d) The parties shall maintain the confidentiality of the neutral*
12 *evaluation process and shall not disclose statements made,*
13 *information disclosed, or documents prepared or produced, during*
14 *the neutral evaluation process, as specified in Section 53762.7.*
15 *This subdivision shall not apply to documents that were not*
16 *confidential prior to the start of the neutral evaluation process.*

17 *SEC. 10. Section 53762.1 is added to the Government Code,*
18 *to read:*

19 *53762.1. The neutral evaluation process shall end if any of the*
20 *following occur:*

21 *(a) The parties execute an agreement of settlement.*

22 *(b) The parties reach an agreement or proposed plan of*
23 *readjustment that requires the approval of a bankruptcy judge.*

24 *(c) The neutral evaluator certifies in writing that one or more*
25 *of the parties has not participated in good faith, that no resolution*
26 *has been reached, and that further efforts at the neutral evaluation*
27 *process would not contribute to a resolution of the parties' dispute.*

28 *(d) The neutral evaluator certifies in writing that the parties*
29 *have participated in good faith but the parties have reached an*
30 *impasse.*

31 *(e) The neutral evaluator certifies in writing that a neutral*
32 *evaluation was initiated by the local public entity but that no*
33 *interested parties participated.*

34 *SEC. 11. Section 53762.3 is added to the Government Code,*
35 *to read:*

36 *53762.3. (a) The local public entity may request the State*
37 *Auditor to conduct an audit of the local public entity for purposes*
38 *of assisting the local public entity in the neutral evaluation process.*

39 *(b) Upon receipt of a request for an audit from a public entity,*
40 *the State Auditor shall audit the finances of the local public entity.*

1 *The State Auditor shall work with the local public entity to establish*
2 *a reasonable deadline for the audit work.*

3 *(c) If a local public entity requests an audit pursuant to this*
4 *section, the Controller shall transfer sufficient funds from the*
5 *General Fund to the State Auditor to reimburse the State Auditor*
6 *for the audit activities. The Controller shall use General Fund*
7 *revenues that are payable to the state from local public entities*
8 *during the fiscal year in which the audit is performed. This*
9 *subdivision shall not be deemed to create an additional fiscal*
10 *obligation to the local public entity.*

11 *(d) At the request of the public entity, the State Auditor may*
12 *choose not to disclose that the local public entity has requested*
13 *an audit. The auditor's report developed pursuant to this section*
14 *shall become public at the time of filing for bankruptcy or prior*
15 *to filing at the public entity's discretion.*

16 *SEC. 12. Section 53762.5 is added to the Government Code,*
17 *to read:*

18 *53762.5. (a) Notwithstanding Section 53760, if the financial*
19 *difficulties of the local public entity jeopardize the health, safety,*
20 *or well-being of the residents of the local public entity's jurisdiction*
21 *or service area absent the protections of Chapter 9, the local public*
22 *entity may, with the written approval of the Local Agency*
23 *Bankruptcy Committee, under the terms and conditions that the*
24 *committee may impose, file for adjustment of debts pursuant to*
25 *Chapter 9.*

26 *(b) The Local Agency Bankruptcy Committee shall consist of*
27 *the Treasurer, the Controller, and the Director of Finance.*

28 *(c) The Local Agency Bankruptcy Committee shall provide its*
29 *written approval or denial of consent to file a petition and exercise*
30 *powers pursuant to applicable federal bankruptcy law not later*
31 *than five calendar days from receipt of the request of the local*
32 *public entity. If the Local Agency Bankruptcy Committee*
33 *determines that the local public entity's financial difficulties have*
34 *or will result in an emergency as described in subdivision (a), the*
35 *local public entity may proceed with a Chapter 9 filing without*
36 *having convened or completed a neutral evaluation process.*

37 *(d) If the Local Agency Bankruptcy Committee does not respond*
38 *to the request within seven days after the receipt of the request,*
39 *the request shall be considered approved.*

1 (e) A local public entity that has requested approval to file under
2 subdivision (a) may require local agencies with funds invested in
3 the local public entity's treasury to provide a seven-day notice of
4 withdrawal before the county is required to comply with a request
5 for withdrawal of funds by a local public entity.

6 (f) Notwithstanding subdivision (a) of Section 11125, the Local
7 Agency Bankruptcy Committee shall provide notice of its meeting
8 at least 24 hours in advance of the meeting. The notice shall be
9 posted in a location within the local public entity that is freely
10 accessible to members of the public. The notice shall be delivered
11 personally, by United States mail, electronic mail, or by facsimile
12 transmission to each local newspaper of general circulation whose
13 circulation area reasonably includes the municipality and shall
14 similarly be delivered to each radio or television station that has
15 requested notice in writing. The notice shall be received by the
16 newspaper, radio, or television station at least 24 hours prior to
17 the date of the meeting specified in the notice. In addition, if the
18 Legislature is in session, the committee shall request that the
19 meeting notice be published in the daily file of each house at least
20 24 hours prior to the date of the meeting.

21 (g) The Local Agency Bankruptcy Committee's approving or
22 denying of a filing under this section, shall not obligate the state,
23 in any manner, regarding financing a plan for adjustment of the
24 municipality's debts or any act relating to that financing.

25 (h) This section shall apply only to a local public entity that
26 files as a debtor, as specified in subdivision (a), on or after the
27 effective date of this article.

28 SEC. 13. Section 53762.7 is added to the Government Code,
29 to read:

30 53762.7. (a) Evidence of anything said or any admission made
31 for the purpose of, in the course of, or pursuant to, a neutral
32 evaluation shall not be admissible or subject to discovery, and
33 disclosure of the evidence shall not be compelled, in any
34 arbitration, administrative adjudication, civil action, or other
35 noncriminal proceeding in which, pursuant to law, testimony can
36 be compelled to be given.

37 (b) Any writing, as defined in Section 250 of the Evidence Code,
38 that is prepared for the purpose of, in the course of, or pursuant
39 to a neutral evaluation shall not be admissible or subject to
40 discovery, and disclosure of the writing shall not be compelled, in

1 any arbitration, administrative adjudication, civil action, or other
2 noncriminal proceeding in which, pursuant to law, testimony can
3 be compelled to be given.

4 (c) Any communication, negotiation, or settlement discussion
5 by and between participants in the course of a neutral evaluation
6 shall remain confidential.

7 (d) Evidence otherwise admissible or subject to discovery
8 outside of a neutral evaluation shall not be or become inadmissible
9 or protected from disclosure solely by reason of its introduction
10 or use in a neutral evaluation.

11 (e) A neutral evaluator or any other person shall not be allowed
12 to submit to a court or other adjudicative body, and a court or
13 other adjudicative body shall not consider, any report, assessment,
14 evaluation, recommendation, or finding of any kind by the neutral
15 evaluator concerning a neutral evaluation conducted by the neutral
16 evaluator.

17 (f) A communication or a writing, as defined in Section 250 of
18 the Evidence Code, that is made or prepared for the purpose of,
19 or in the course of, or pursuant to, a neutral evaluation is not made
20 inadmissible, or protected from disclosure, by this chapter if either
21 of the following conditions is satisfied:

22 (1) All persons that conduct or otherwise participate in the
23 neutral evaluation expressly agree in writing, or orally in
24 accordance with Section 1118 of the Evidence Code, to disclosure
25 of the communication, document, or writing.

26 (2) The communication, document, or writing was prepared by
27 or on behalf of fewer than all the neutral evaluation participants,
28 those participants expressly agree to its disclosure, and the
29 communication, document, or writing does not disclose anything
30 said or done or any admission made in the course of the neutral
31 evaluation.

32 (g) A written settlement agreement prepared in the course of,
33 or pursuant to, a neutral evaluation, is not made inadmissible, or
34 protected from disclosure, by this section if the agreement is signed
35 by the settling parties and any of the following conditions are
36 satisfied:

37 (1) The agreement provides that it is admissible or subject to
38 disclosure, or words to that effect.

39 (2) The agreement provides that it is enforceable or binding,
40 or words to that effect.

1 (3) *All parties to the agreement expressly agree to its disclosure.*

2 (4) *The agreement is used to show fraud, duress, or illegality*
3 *that is relevant to an issue in dispute.*

4 (h) *An oral agreement made in the course of, or pursuant to, a*
5 *neutral evaluation is not made inadmissible, or protected from*
6 *disclosure, by this chapter if any of the following conditions are*
7 *satisfied:*

8 (1) *The oral agreement is recorded by a court reporter or*
9 *reliable means of audio recording.*

10 (2) *The terms of the oral agreement are recited on the record*
11 *in the presence of the parties and the mediator, and the parties*
12 *express on the record that they agree to the terms recited.*

13 (3) *The parties to the oral agreement expressly state on the*
14 *record that the agreement is enforceable or binding, or words to*
15 *that effect.*

16 (4) *The recording is reduced to writing and the writing is signed*
17 *by the parties within 72 hours after it is recorded.*

18 (5) *The agreement is used to show fraud, duress, or illegality*
19 *that is relevant to an issue in dispute.*

20 (i) *Anything said, any admission made, or any writing that is*
21 *inadmissible, protected from disclosure, and confidential under*
22 *this chapter before a neutral evaluation ends, shall remain*
23 *inadmissible, protected from disclosure, and confidential to the*
24 *same extent after the neutral evaluation ends.*

25 (j) *If a person subpoenas or otherwise seeks to compel a neutral*
26 *evaluator to testify or produce a writing, as defined in Section 250*
27 *of the Evidence Code, and the court or other adjudicative body*
28 *determines that the testimony or writing is inadmissible under this*
29 *section, or protected from disclosure under this section, the court*
30 *or adjudicative body making the determination shall award*
31 *reasonable attorney's fees and costs to the neutral evaluator*
32 *against the person seeking the testimony or writing.*

33 (k) *Any reference to a neutral evaluation during any subsequent*
34 *trial is an irregularity in the proceedings of the trial for the*
35 *purposes of Section 657 of the Code of Civil Procedure. Any*
36 *reference to a neutral evaluation during any other subsequent*
37 *noncriminal proceeding is grounds for vacating or modifying the*
38 *decision in that proceeding, in whole or in part, and granting a*
39 *new or further hearing on all or part of the issues, if the reference*

1 *materially affected the substantial rights of the party requesting*
2 *relief.*

3 ~~SECTION 1. The Legislature hereby finds and declares that it~~
4 ~~is the intent of the Legislature to enact an alternative dispute~~
5 ~~resolution procedures that cities, counties, and special districts~~
6 ~~may use before they seek financial relief through the provisions~~
7 ~~of Chapter 9 of the federal Bankruptcy Code.~~

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